

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov**

In re:

IPS WORLDWIDE, LLC,

CASE NO.: 6:19-bk-00511-KSJ

Debtor,

CHAPTER 11

**OMNIBUS MOTION PURSUANT TO FED. R. BANKR. P. 9019 FOR AN ORDER
APPROVING THE COMPROMISE AND SETTLEMENT OF CREDITOR CLAIMS**

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within twenty-one (21) days from the date set forth on the attached proof of service, plus an additional three (3) days for service if any party was served by U.S. Mail. You should read these papers carefully and discuss them with your attorney if you have one. If the paper is an objection to your claim in this bankruptcy case, your claim may be reduced, modified, or eliminated.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Bankruptcy Court, George C. Young Federal Courthouse, 400 W. Washington Street, Suite 5100, Orlando, FL 32801 and serve a copy on the movant's attorney, R. Scott Shuker, Esq., Latham, Shuker, Eden & Beaudine, LLP, P. O. Box 3353, Orlando, Florida 32802-3353, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

CHAPTER 11 TRUSTEE, ALEX D. MOGLIA ("Trustee"), hereby files this motion (the "Motion") for the entry of an order approving the compromise and settlement of creditor claims to certain bank accounts maintained by **IPS WORDWIDE, LLC** ("IPS" or the "Debtor"). In support of the Motion, the Trustee states as follows:

Relevant Factual and Procedural History

1. On January 25, 2019 (the “Petition Date”), the Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code.

2. On April 5, 2019, the Court entered an order granting the motions of the U.S. Trustee (Doc. No. 227) and creditor, Stanley Black & Decker, Inc. (Doc. No. 290) for the appointment of a Chapter 11 trustee in the Debtor’s bankruptcy case. That same day, Alex D. Moglia (the “Trustee”) was appointed to serve as Chapter 11 Trustee for the Debtor (Doc. No. 291).

3. Prior to the appointment of the Trustee, the Court entered an order approving an application filed by the United States Trustee selecting Maria M. Yip (the “Examiner”) as examiner to investigate the assets and financial affairs of the Debtor.

4. Following her appointment, the Examiner filed a second interim report (the “Second Interim Report”) detailing her investigation of the Debtor’s financial affairs and her investigation of certain client designated bank accounts maintained by the Debtor (the “Accounts”), which report included the Examiner’s recommendations regarding the release of funds from the Accounts. The Examiner also filed a third interim report (the “Third Interim Report”) (Doc. No. 382), which report further detailed the Examiner’s findings and recommendations in respect of the Accounts.

5. On April 11, 2019, the Court entered an Administrative Order directing the Examiner to, among other things, (i) open a data room containing information parties may use to assess the release of funds from the Accounts; and (ii) propose a formal procedure to resolve any issues concerning the Examiner’s recommendations and the disposition of funds from the Accounts. The Administrative Order also authorized interested parties to file an objection to the Procedures by April 25, 2019.

6. On April 19, 2019, the Examiner proposed procedures (the “Procedures”) in accordance with the Court’s directive (Doc. No. 328, procedures amended at Doc. No. 333).

7. Limited objections to the Procedures were filed by YRC Enterprise Services, Inc. and YRC, Inc. d/b/a YRC Freight (Doc. No. 346); TE Connectivity f/k/a Tyco Electronics Corporation (Doc. No. 348); Stanley Black & Decker, Inc. (Doc. No. 349); Arconic, Inc. (Doc. No. 350); Neogen Corporation (Doc. No. 351); Gibraltar Industries, Inc. (Doc. No. 352); GlobalTranz Enterprises, Inc. and Rexnord Industries, LLC (Doc. No. 353); and Zekelman Industries (Doc. No. 359), which objections were addressed at a hearing held on April 26, 2019 (the “Hearing”) to consider approval of the Procedures.

8. Following the Hearing, the Court entered its *Order Establishing Procedures and Deadlines for Resolution of Issues Concerning Examiner’s Recommendations Regarding Accounts Maintained by the Debtor* (Doc. No. 375, dated May 6, 2019) (the “Resolution Procedures Order”).

9. Pursuant to the Resolution Procedures Order, any creditor claiming an interest in the funds held in the Accounts (hereinafter a “Claimant”) was directed to request a meeting with the Trustee to discuss the recommendations set forth in the Second and Third Interim Reports and the disposition of funds held in the Accounts. Any Claimant requesting a meeting with the Trustee was required to send an email communication to the Trustee, and his counsel, briefly setting forth the basis for the meeting and the requesting party’s availability to discuss the Examiner’s recommendations. The meeting procedure was designed to facilitate open dialogue regarding the release of funds held in the Accounts and each party’s respective position on the Examiner’s recommendations, with the hope that such discussions would yield a compromise of the various claims made to the funds held in the Accounts and avoid further litigation at the expense of the estate.

10. In accordance with the Resolution Procedures Order, and following receipt of a number of meeting requests, the Trustee conducted nineteen (19) meetings between May 14, 2019 and May 30, 2019, and reached a compromise with the following Claimants: Aclara Meters, LLC (“Aclara”); Suez Water Treatment (“Suez”); Stanley Black & Decker (“Stanley”); Integrated Supply Network (“ISN”); Arconic, Inc. (“Arconic”); Gibraltar Industries, Inc. (“Gibraltar”); ArcelorMittal USA, LLC (“Arcelor”); Fluidigm (“Fluidigm”); Sheboygan Paint (“Sheboygan”); Synchrony Financial (“Synchrony”); Wabash National (“Wabash”); Watlow (“Watlow”); Atkore International (“Atkore”); Bio-Rad Laboratories (“Bio-Rad”); Life Technologies (“Life Tech.”); and Rexnord (“Rexnord”); and TE Connectivity (“Tyco”). (The aforementioned are referred to, individually, as Settling Claimant and are collectively referred to herein as the “Settling Claimants” – where appropriate).

11. Trustee and the Settling Claimants (collectively referred to as the “Parties”) have determined that their compromise avoids the uncertainty and expense associated with litigating their respective claims to the funds held in the Accounts and, thus, believe the compromises outlined below are in the best interests of the Debtor’s estate.

The Proposed Compromises

12. Each compromise reached between the Parties includes “General Conditions” applicable to all Settling Claimants, and an amount to be disbursed to each Settling Claimant from the funds held in the Accounts. The disbursement will occur after entry of a Final Order approving the Motion. The material terms of each compromise reached between the Parties are as follows:¹

¹ The Trustee is willing to execute specific settlement agreements for each of the Settling Claimants (Aclara and TE Connectivity have made an acceptable settlement agreement a condition of settlement); however, the Trustee has required such agreements to be drafted by the respective Settling Claimant. To the extent of any inconsistency between the terms and conditions set forth in this Motion, and a settlement agreement executed by and between the Trustee and a Settling Claimant, the terms of such settlement agreement shall control.

General Conditions Applicable to All Settling Claimants

(i) The Debtor's Estate waives any causes of action under Bankruptcy Code Sections 544-550 as to each Settling Claimant and their respective carriers. To the extent a Settling Claimant wants to list the released carriers, the Trustee is willing to file a notice of such carriers.

(ii) Each Settling Claimant shall receive an allowed unsecured claim, not subject to objection or reduction, for the balance of their respective claims after receipt of the disbursements outlined in the table below.

(iii) Each Settling Claimant shall receive a general release from the Debtor of all claims and causes of action and other matters which were asserted, or which could have been asserted, by the Debtor.

Monetary Component

<u>Settling Claimant</u>	<u>Account Disputed</u>	<u>Balance in Account</u>	<u>Distribution to Settling Claimant²</u>	<u>Amount Retained by the Debtor's Estate</u>
Aclara	Ending #: 2691	\$4,209,842.02	\$176,000.00	Balance of #2691 after payment to Suez
Arcelor	Ending #: 5585	\$572,992.08	\$362,000.00	\$210,992.08
Arconic	Ending #: 7720 and 4221	\$488,470.50 Acct: 7720 \$172,014.00 CAD Acct: 4221	\$244,235.25 from Acct: 7720 and \$172,014.00 CAD from Acct: 4221	\$244,235.25
Atkore	Ending #: 4522	\$2,672.99	\$1,336.49	\$1,336.49
Bio-Rad	Ending #: 7088	\$92,480.33	\$46,240.00	\$46,240.00
Fluidigm	Ending: #2675	\$81,923.37	\$79,923.37	\$2,000.00
Gibraltar	Ending #: 6546	\$574,000.00	\$287,000.00	\$287,000.00

² Disbursements will be made directly to the Settling Claimant (or, at request of a Settling Claimant, to respective carriers) in the amounts specified in the Monetary Component Table immediately upon Court approval of the compromises.

ISN	Ending #: 5136	\$186,488.50	\$93,244.25	\$93,244.25
Life Tech	Ending #: 7075	\$713,465.70	\$356,732.85	\$356,732.85
Rexnord	Ending #: 7023	\$1,253,964.58	\$1,200,000.00	\$53,964.58
Sheboygan	Ending #: 5663	\$7,914.30	\$914.30	\$7,000.00
Stanley	Ending #: 2633, 2688, 2296, 2646, 2659, 2675, 5650, 5585, 5663, 4157	\$2,615,000.00	\$1,307,500.00	\$1,307,500.00
Suez	Ending #: 2691	\$4,209,842.02	\$1,400,000.00	\$2,633,000.00
Synchrony	Ending #: 2688	\$289,114.66	\$128,000.00	\$161,114.66
TYCO	Ending #: 4157, 4205, 1020, 1012, 1046, 2021 and 3380	\$2,615,845.69	\$196,736.96 USD from Acct Ending #: 1012 and \$845,001.00 USD from Acct # Ending: 1020 Total: \$1,041,737.90 USD	Balance of 4157 after payment to Stanley
Wabash	Ending #2659	\$20,513.70	\$5,513.70	\$15,000.00
Watlow	Ending #2296	\$377,338.23	\$163,000.00	214,338.23

Basis to Approve the Compromise

13. Bankruptcy Rule 9019(a) provides that on a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. The decision of whether or not to approve a compromise is within the sound discretion of the court. *In re Chira*, 367 B.R. 888, 896 (S.D. Fla. 2007) *aff'd* 567 F.3d 1307 (11th Cir. 2010) (citing *In re Air Safety Int'l, L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005)). In passing on proposed settlements, the Court must determine whether a proposed settlement is fair and equitable and must evaluate whether the compromise

falls below the “lowest point in the range of reasonableness.” *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993).

14. To assist the courts in evaluating proposed settlements, the Eleventh Circuit, in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), developed a set of factors bankruptcy courts should consider in determining whether a settlement proposal is fair and equitable. These factors include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990).

15. Trustee submits that the compromises outlined above satisfy the factors set forth by the Eleventh Circuit in *Justice Oaks* and, thus, are fair and equitable. This conclusion is supported by the fact that the agreements reached between the Parties: (i) are the product of good-faith, arms-length negotiations, which negotiations have taken into account each party’s potentially meritorious claims and defenses; and (ii) provide a reasoned and fair solution to the various issues surrounding the Accounts, which issues, if left unresolved, would only result in a flood of costly litigation which would consume estate resources to the detriment of Debtor’s creditors. Under these circumstances, Trustee has determined, in his business judgment, that the proposed compromises are fair, equitable, in the best interests of the Debtor’s Estate, and well within the range of reasonableness for approval under Bankruptcy Rule 9019(a).

16. As to the litigation risks, many of the arguments raised by the Settling Claimants, if successful, would result in the estate retaining no amount from the accounts. Thus, if the Trustee litigates each account and is unsuccessful, it is possible the estate could be left with no funds and

administratively insolvent. A major incentive to the Settling Claimants was the ability to receive funds now and have no future litigation regarding the estate. As such, the releases are critical to these settlements.

WHEREFORE, based on the foregoing reasons and authorities, Trustee respectfully requests that the Court enter an Order: (i) granting this Motion and approving the terms of the compromises outlined herein; (ii) retaining jurisdiction: (a) over the terms of the compromises and the Parties to enforce the order granting this Motion; and (b) to enforce the terms of the compromises; and (iii) granting such other relief as this Court deems proper.

RESPECTFULLY SUBMITTED this 12th day of June 2019.

/s/ R. Scott Shuker

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MIDDLE DISTRICT OF FLORIDA
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www.flmb.uscourts.gov

In re:

IPS WORLDWIDE, LLC,

CASE NO.: 6:19-bk-00511-KSJ

Debtor,

CHAPTER 11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the forgoing OMNIBUS MOTION PURSUANT TO FED. R. BANKR. P. 9019 FOR AN ORDER APPROVING THE COMPROMISE AND SETTLEMENT OF CREDITOR CLAIMS has been furnished either electronically via transmission of Notice of Electronic Filing generated by CM/ECF on all counsel or record or *pro se* parties who are authorized to receive electronic notice in this bankruptcy case, and/or by U.S. First Class, postage prepaid mail to: Chapter 11 Trustee, Alex D. Moglia, Moglia Advisors, 1325 Remington Road, Suite H, Schaumburg, IL 60173; Debtor, c/o Counsel for Debtor, Scott W. Spradley, Esq., Law Offices of Scott W. Spradley, P.A., 109 S. 5th Street, Flagler Beach, Florida 32136; Counsel for Creditors Committee, Counsel for Creditors Committee, Rafael X. Zahraiddin-Aravena, Esq., Elliott Greenleaf, 1105 N Market Street, Suite 1700, Wilmington, DE 19801, rxza@elliottgreenleaf.com; Eric M. Suttty, Elliot Greenleaf, P.C., 1105 N. Market Street, Suite 1700, Wilmington, DE 19801, ems@elliottgreenleaf.com; and Bradley M. Saxton, Esq. and Ryan E. Davis, Esq., Winderweedle, Haines, Ward & Woodman, PA, 329 Park Avenue North, 2nd Floor, Winter Park, FL 32789, bsaxton@whww.com; rdavis@whww.com; Audrey M. Aleskovsky and Charles R. Sterbach, Office of the United States Trustee, 400 W. Washington Street, Suite 1100, Orlando, FL 32801, audrey.m.aleskovsky@usdoj.gov; Charles.r.sterbach@usdoj.gov; and all creditors listed on the attached matrix, as shown on the attached matrix this 12th day of June 2019.

/s/ R. Scott Shuker

R. Scott Shuker, Esq.



Label Matrix for local noticing
113A-6
Case 6:19-bk-00511-KSJ
Middle District of Florida
Orlando
Wed Jun 12 10:17:09 EDT 2019

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